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MERCHANTS CREDIT CORPORATION d/b/a
MERCHANTS CREDIT ASSOCIATION

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAIM WOLMARK,

Plaintiff,

vs.

MERCHANTS CREDIT
CORPORATION d/b/a MERCHANTS
CREDIT ASSOCIATION and DOES 1-
10, inclusive,

Defendants.

CASE NO.: 2:23-cv-7126 SVW-RAO

**DEFENDANT MERCHANTS
CREDIT CORPORATION d/b/a
MERCHANTS CREDIT
ASSOCIATION'S ANSWER TO
COMPLAINT**

Defendant MERCHANTS CREDIT CORPORATION D/B/A
MERCHANTS CREDIT ASSOCIATION ("Defendant" or "MCA") hereby
answers the Complaint of CHAIM WOLMARK ("Plaintiff") by admitting,
denying, and alleging as follows:

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I. INTRODUCTION

1. Answering Paragraph 1 of the Complaint, Defendant admits Plaintiff brings this action under the Rosenthal Fair Debt Collection Practice Act (“RFDCPA”), Cal. Civ. Code § 1788-1788.32, the Fair Debt Collection Practice Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the California Consumer Credit Reporting Agencies Act (“CCRAA”), Cal. Civ. Code § 1785.1, *et seq.*, and California Business & Professions Code §§ 17200, *et seq.* However, Defendant denies violating the RFDCPA, FDCPA, CCRAA or UCL.

II. PARTIES

2. Answering Paragraph 2 of the Complaint, Defendant lacks sufficient knowledge to either admit or deny the allegation contained therein.

3. Answering Paragraph 3 of the Complaint, Defendant admits that at times it engages in the business of debt collection. Defendant also admits that it is headquartered in Redmond, Washington. However, Defendant denies any liability and any remaining allegations contained therein.

III. JURISDICTION

4. Answering Paragraph 4 of the Complaint, said paragraph contains legal conclusions and arguments as to which no response is required. To the extent a response is required, Defendant lacks sufficient knowledge or information to form a belief concerning the truth of the factual allegations contained therein and, on that basis, denies such allegations. Defendant does not challenge personal jurisdiction in California with respect to the claims in this action only.

IV. FACTUAL BACKGROUND

5. Answering Paragraph 5 of the Complaint, Defendant repeats and realleges the responses to each and every allegation set forth above in paragraphs 1-4.

1 6. Answering Paragraph 6 of the Complaint, Defendant admits that
2 Plaintiff allegedly incurred a debt.

3 7. Answering Paragraph 7 of the Complaint, Defendant admits that a
4 debt of Plaintiff was referred or assigned to it for collection.

5 8. Answering Paragraph 8 of the Complaint, Defendant lacks sufficient
6 knowledge to either admit or deny the allegation contained therein and, on that
7 basis, denies same.

8 9. Answering Paragraph 9 of the Complaint, denies the allegations
9 contained therein

10 10. Answering Paragraph 10 of the Complaint, Defendant lacks sufficient
11 knowledge to either admit or deny the allegation contained therein and, on that
12 basis, denies same.

13 11. Answering Paragraph 11 of the Complaint, Defendant lacks sufficient
14 knowledge to either admit or deny the allegation contained therein and, on that
15 basis, denies same.

16 12. Answering Paragraph 12 of the Complaint, Defendant lacks sufficient
17 knowledge to either admit or deny the allegation contained therein and, on that
18 basis, denies same.

19 13. Answering Paragraph 13 of the Complaint, Defendant lacks sufficient
20 knowledge to either admit or deny the allegation contained therein and, on that
21 basis, denies same.

22 14. Answering Paragraph 14 of the Complaint, Defendant denies the
23 allegations contained therein.

24 15. Answering Paragraph 15 of the Complaint, Defendant denies the
25 allegations contained therein.
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1 16. Answering Paragraph 16 of the Complaint, Defendant denies the
2 allegations contained therein.

3 17. Answering Paragraph 17 and subparagraphs (a) through (c) of the
4 Complaint, Defendant denies the allegations contained therein.

5 18. Answering Paragraph 18 of the Complaint, Defendant denies the
6 allegations contained therein.

7 19. Answering Paragraph 19 of the Complaint, Defendant denies the
8 allegations contained therein.

9 20. Answering Paragraph 20 of the Complaint, Defendant denies the
10 allegations contained therein.

11 21. Answering Paragraph 21 of the Complaint, Defendant denies the
12 allegations contained therein.

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14 **V. FIRST CLAIM FOR RELIEF**

15 22. Answering Paragraph 22 of the Complaint, Defendant repeats and
16 realleges the response to paragraphs 1-22 above as if fully set forth herein.

17 23. Answering Paragraph 23 of the Complaint, Defendant denies the
18 allegations contained therein.

19 24. Answering Paragraph 24 of the Complaint, Defendant denies the
20 allegations contained therein.

21 25. Answering Paragraph 25 of the Complaint, Defendant denies the
22 allegations contained therein.

23 26. Answering Paragraph 26 and subparagraphs (a) through (c) of the
24 Complaint, Defendant denies the allegations contained therein.

25 27. Answering Paragraph 27 of the Complaint, Defendant denies the
26 allegations contained therein.

1 28. Answering Paragraph 28 of the Complaint, Defendant denies the
2 allegations contained therein.

3 **VI. SECOND CLAIM FOR RELIEF**

4 29. Answering Paragraph 29 of the Complaint, Defendant repeats and
5 realleges the response to paragraphs 1-28 above as if fully set forth herein.

6 30. Answering Paragraph 30 of the Complaint, the paragraph contains no
7 affirmative allegations against Defendant and, therefore, does not require a
8 response. To the extent a response is required, Defendant denies the allegations in
9 Paragraph 30.

10 31. Answering Paragraph 31 of the Complaint and subparagraphs (a)
11 through (d) thereof, Defendant denies that it violated the Rosenthal Act and denies
12 generally and specifically each and every allegation contained therein.

13 32. Answering Paragraph 32 of the Complaint, Defendant denies that it
14 violated the Rosenthal Act and denies that Plaintiff incurred or is entitled to
15 recover any of the alleged damages. Defendant denies generally and specifically all
16 the remaining allegations in Paragraph 32.

17 33. Answering Paragraph 33 of the Complaint, Defendant denies the
18 allegations contained therein.

19 34. Answering Paragraph 34 of the Complaint, Defendant denies the
20 allegations contained therein.

21 **VII. THIRD CLAIM FOR RELIEF**

22 35. Answering Paragraph 35 of the Complaint, Defendant repeats and
23 realleges the response to paragraphs 1-34 above as if fully set forth herein.

24 36. Paragraph 36 of the Complaint constitutes a legal conclusion. If a
25 response is deemed to be required, Defendant denies each and every allegation
26 contained therein.
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1 37. Answering Paragraph 37 of the Complaint, Defendant denies the
2 allegations contained therein.

3 38. Answering Paragraph 38 of the Complaint, Defendant denies the
4 allegations contained therein.

5 **VII. FOURTH CLAIM FOR RELIEF**

6 39. Answering Paragraph 39 of the Complaint, Defendant repeats and
7 realleges the response to paragraphs 1-38 above as if fully set forth herein.

8 40. Answering Paragraph 40 of the Complaint, the paragraph contains no
9 affirmative allegations against Defendant and, therefore, does not require a
10 response. To the extent a response is required, Defendant denies the allegations in
11 Paragraph 40.

12 41. Answering Paragraph 41 of the Complaint, Defendant denies the
13 allegations contained therein.

14 42. Answering Paragraph 42 of the Complaint, Defendant denies the
15 allegations contained therein.

16 43. Answering Paragraph 43 of the Complaint, Defendant denies the
17 allegations contained therein.

18 44. Answering Paragraph 44 of the Complaint, Defendant denies the
19 allegations contained therein.

20 45. Answering Paragraph 45 of the Complaint, Defendant denies the
21 allegations contained therein.

22 46. Answering Paragraph 46 of the Complaint, Defendant denies the
23 allegations contained therein.

24 47. Answering Paragraph 47 of the Complaint, Defendant denies the
25 allegations contained therein.

26 48. Answering Paragraph 48 of the Complaint, Defendant denies the
27 allegations contained therein.

1 Answering Plaintiff's unnumbered Prayer for relief, Defendant denies
2 Plaintiff is entitled to the relief requested in subparts (a) through (f).

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4 **PLAINTIFF'S JURY DEMAND**

5 Defendant admits Plaintiff demands a Jury Trial.

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State Cause of Action)**

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10 1. Plaintiff's Complaint, and each cause of action contained therein, fails
11 to state facts sufficient to constitute a valid cause of action against Defendant.

12 **SECOND AFFIRMATIVE DEFENSE**

13 **(Statute of Limitations)**

14 2. Defendant is informed and believes and based thereon alleges that
15 Plaintiff's Complaint, and each cause of action contained therein, or portions
16 thereof, is barred by the applicable statutes of limitations.

17 **THIRD AFFIRMATIVE DEFENSE**

18 **(Reservation of Rights)**

19 3. Defendant reserves the right to amend its answer and claims herein by
20 adding additional parties, affirmative defenses, counterclaims, cross-claims, and/or
21 third-party claims, as additional investigation, discovery or circumstances warrant.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 **(No Intentional or Reckless Conduct)**

24 4. As a separate, affirmative defense, Defendant contends that it did not
25 engage in any conduct that was outrageous, intentional, and malicious or done with
26 reckless disregard with respect to Plaintiff. Defendant also alleges that it never
27 engaged in any knowing, willful, or fraudulent conduct with respect to Plaintiff.
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FIFTH AFFIRMATIVE DEFENSE

(Mitigation of Damages)

5. Plaintiff is not entitled to recover any damages, or any recovery awarded should be reduced by the amount of damages which reasonably could have been avoided, because Plaintiff failed to take reasonable steps to mitigate her damages with respect to the matters alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Actions Were Privileged and Justified)

6. As a separate, affirmative defense, the Complaint, and each cause of action alleged therein against Defendant, is barred because Defendant was privileged and justified, by statute and by common law, in making the alleged statements and representations, if any.

SEVENTH AFFIRMATIVE DEFENSE

(Bona Fide Error)

7. As a separate, affirmative defense, assuming arguendo that this Defendant violated a statute alleged in the Complaint, which presupposition the Defendant denies, such violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

EIGHTH AFFIRMATIVE DEFENSE

(Reasonableness and Good Faith)

8. Defendant and its agents, if any, acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by them at the time they so acted, Defendant alleges that they acted lawfully and within their legal rights, with a good faith belief in the exercise of those rights, and in the furtherance of legitimate business purpose. Further, Defendant acted in

1 good faith in the honest belief that the acts, conduct and communications, if any, of
2 Defendant were justified under the circumstances based on information reasonably
3 available to this answering Defendant. Accordingly, Plaintiff are barred from any
4 recovery in this action.

5 **NINTH AFFIRMATIVE DEFENSE**

6 **(Offset)**

7 9. Any damages that Plaintiff may recover against Defendant in this
8 Action must be offset against all amounts owed to Defendant.

9 **TENTH AFFIRMATIVE DEFENSE**

10 **(No Damages)**

11 10. As a separate, affirmative defense, Defendant asserts that Plaintiff
12 suffered no actual damages.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 **(Substantial Compliance)**

15 11. As a separate, affirmative defense, Defendant asserts it substantially
16 complied with the requirements of the statutes at issue.

17 **TWELFTH AFFIRMATIVE DEFENSE**

18 **(No standing)**

19 12. As a separate, affirmative defense, Defendant asserts that Plaintiff lacks
20 standing to assert the claims contained in her lawsuit.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 **(Maintained Reasonable Procedure)**

23 13. As a separate affirmative defense, Defendant asserts that it maintained
24 reasonable procedures.
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FOURTEENTH AFFIRMATIVE DEFENSE

(Damages are Limited)

14. As a separate affirmative defense, Defendant asserts that is Plaintiff was damaged in any sum or sums alleged, which Defendant denies, then Plaintiff's damages are limited by the FDCPA and RFDCPA.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Dispute)

15. As a separate, affirmative defense, Defendant alleges Plaintiff failed to report a dispute to a credit reporting agency and/or Defendant did not receive notice from a credit reporting agency of Plaintiff's dispute that would give rise to a furnisher's

SIXTEENTH AFFIRMATIVE DEFENSE

(Ambiguous Dispute)

16. As a separate, affirmative defense, Plaintiff's dispute was ambiguous with respect to the dispute at issue and what Defendant must investigate.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Reasonable Investigation)

17. As a separate, affirmative defense, Defendant alleges that it conducted a reasonable investigation.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Accuracy)

18. As a separate, affirmative defense, Defendant alleges that the information reported to the credit reporting agencies was accurate.

NINETEENTH AFFIRMATIVE DEFENSE
(No Strict Liability)

19. As a separate, affirmative defense, Defendant alleges that the FCRA is not a strict liability statute, and as such, Plaintiff cannot prove that Defendant's actions were negligent or willful as set forth in the statute. 15 U.S.C. §§ 1681o and 1681n.

DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, Defendant denies every request in Plaintiff's prayer, and prays that Plaintiff's Complaint be dismissed with prejudice, for its attorneys' fees and costs incurred herein, and for such further relief as the court deems just and equitable.

JURY TRIAL DEMAND

Defendant demands a trial by Jury.

CARLSON & MESSER LLP

DATED: November 3, 2023

By: /s/ Michael P. Lavigne
David J. Kaminski
Michael P. Lavigne
Attorney for Defendant
MERCHANTS CREDIT CORPORATION
d/b/a MERCHANTS CREDIT ASSOCIATION

CERTIFICATE OF SERVICE

I, Michael P. Lavigne, hereby certify that on November 3, 2023, a true and correct copy of the foregoing document entitled **DEFENDANT MERCHANTS CREDIT CORPORATION d/b/a MERCHANTS CREDIT ASSOCIATION'S ANSWER TO COMPLAINT** was filed through the ECF system, which will send notification of such filing to the e-mail addresses associated with this case.

Dated: November 3, 2023

CARLSON & MESSER LLP

By: /s/ Michael P. Lavigne
Michael P. Lavigne